

8 Official Opinions of the Compliance Board 166 (2013)

- ◆ **Closed Session Procedures – Written Statement**
 - ◇ Generally – use of model form recommended, but not required
- ◆ **Compliance Board – Authority and Procedures – Opinions**
 - ◇ Conflicting inferences: cannot be resolved
- ◆ **Compliance Board – Authority and Procedures – Response to complaint**
 - ◇ Response required of each public body alleged to have violated the Act
- ◆ **Exceptions Permitting Closed Sessions – Personnel, §10-508(a)(1)**
 - ◇ Within exception, discussion of:
Selection of recipients of honorary degrees
- ◆ **Exceptions Permitting Closed Sessions – Private information about individuals:**
 - ◇ Generally: applicable only to confidential personal information

*Topic headings correspond to those in the Opinions Index (2010 edition) at
<http://www.oag.state.md.us/opengov/openmeetings/appf.pdf>

April 8, 2013

*Re: University System of Maryland Board of Regents-
Committee on Education Policy and Student Life:
(Craig O'Donnell-Kent County News, Complainant)*

We have considered the complaint of Craig O'Donnell, of the Kent County News, ("Complainant"), that the Committee on Education Policy and Student Life ("EPSL Committee"), a standing committee of the University System of Maryland Board of Regents ("Board"), violated the Open Meetings Act ("Act") by meeting in closed session without making the required disclosures.

Complainant has recently filed similar complaints about the Board's other standing committees and the Board itself. The Board, arguing that Complainant's allegations here are "recycle[d]," responds for the EPSL

Committee by acknowledging our February 26, 2013 opinion about the Board and referring us to its response to the complaints about the other committees. In that response, the Board correctly summarized the practices that it and its associated public bodies must follow and pledged to follow those practices. Since then, by request of the Board Chair, our counsel has met with committee staff and will meet with presiding officers to review the requirements of the Act. The Board has not responded to the allegations specific to the 2012 meetings detailed in this complaint.¹

Despite the common legal themes of the complaints—that the committees’ closing procedures did not satisfy the Act—the facts vary by committee. Each committee is, as the Board recognizes, a separate public body and each meeting is a separate event. Still, it should be remembered that our function is chiefly advisory and that, once we have issued an opinion, as we did at 8 *OMCB Opinions* 137, 147 (2013), it serves little purpose to address the practices followed by a sub-set of the same public body. We therefore address most of the allegations in summary fashion. We will state our conclusions along the way.

Discussion

Relying solely on the documents provided by Complainant, we conclude that the EPSL Committee violated the Act when it failed to name the University System staff who attended its closed sessions, for the reasons stated in our earlier opinion. We decline to find that the use of an acronym in minutes is a violation; other minutes explain the acronym in question, and there is a limit to the extent we will opine on the content of minutes. We reach no conclusion about the absence of a closing statement for the June 6, 2012, meeting because we do not know whether the EPSL Committee held a closed session subject to the Act. Complainant concludes from a reference in later minutes to the adoption of “Executive Notes” that such a session was held; that caption could just as well apply to notes of a free-standing administrative session, not subject to the Act.

We find that the EPSL Committee’s descriptions of the events of the closed sessions mostly contain sufficient detail, but that the committee did not comply with State Government Article (“SG”)§ 10-503(c) when it stated circularly that the subject of the administrative portion of the session was “administrative matters.” Additionally, this committee should ensure that the discussion held in a closed session corresponds to the exception claimed as a basis for the closing. When the committee closes a meeting to discuss the award of honorary degrees to specific individuals, a subject that involves public business, the discussion will likely stray into what is

¹ The Board also asked us to consolidate this complaint with the one that Complainant had filed on January 15, 2013 and that we had consolidated with the one he had filed in December 19, 2013. We deny the request because this complaint raises fewer issues than the earlier one and could be resolved more quickly.

publicly known about the potential honorees and thus beyond the exception “to protect the privacy or reputation of individuals with respect to a matter that is not related to public business.” See SG § 10-508(a)(2). If the committee needs to close a meeting to discuss the attributes of individuals, it might also cite the SG § 10-608(a)(1) exception for the “appointment . . . of appointees. . . .” In our view, the selection of a person to receive an honorary degree is sufficiently analogous to an “appointment” to qualify for that exception. Neither exception would apply to a discussion about the selection process, the criteria for the awards, or the creation of an award.

Finally, Complainant complains that the closing statements do not include the recorded vote on a motion to close. Although the model closing statement, or form, posted on the Attorney General’s website contains spaces in which to record such votes and other required information, the Act does not require public bodies to include the recorded vote information in the written statement. The Act requires the presiding officer to “(i) conduct a recorded vote on the closing of the session” and “(ii) make a written statement of the reason for closing the meeting, including a citation of the authority under this section, and a listing of the topics to be discussed.” SG § 10-508(d)(2). So, while we believe the better practice is to disclose the vote immediately on the written statement, a public body may record the vote in its minutes.

Likewise, the model form contains a signature line so that the presiding officer can easily demonstrate his or her ratification of a closing statement pre-prepared by staff. The presiding officer, as the person who conducts the public body’s meetings, is charged with making (or ratifying) the written statement because he or she will be responsible for keeping the closed-session discussion within the topics disclosed and within the bounds of the claimed exception. A public body may record the presiding officer’s acknowledgment of the written statement in its minutes if it prefers; again, we think the better practice is to include it in the written statement, which is immediately available to the public. And, we have theorized that a public body’s written statement would comply with the Act if, though in the form of an agenda item, it contained the specific information required by SG § 10-508(d)(2)(ii) and was acknowledged by the presiding officer as a valid closing statement right before the closed session. See 4 *OMCB Opinions* 46, 48 (2004), <http://www.oag.state.md.us/Opinions/Open2004/4omcb46.pdf> (explaining what an agenda item should contain in order to serve as a closing statement; finding the particular item insufficient). We do not necessarily recommend any of these methods; our former counsel introduced the model form because public bodies’ own procedures too often did not work. See, e.g., 7 *OMCB Opinions* 112, 114 (2011) (addressing steps omitted by the public body).

In sum, the public body’s objective should be to treat each decision to exclude the public as a substantive decision for which each member of the public body is accountable and to demonstrate that fact to the public in the ways required by the Act. The model form directs the presiding officer to follow each statutorily-required step, enables the public body to

establish, in one place and more promptly than in minutes, that it took those steps, and serves as a guide for the presiding officer in the closed session. But the Act does not require the use of the form; a public body may devise its own methods of complying with SG § 10-508(d)(2) and the closed-session reporting requirements in SG § § 10-509(c)(2) and 10-503(c) and of ensuring that the discussion stays within the limits of the claimed exception.

Conclusion

In conclusion, the complaints about the Board's and committees' closed-session procedures have served the useful purpose of prompting the Board to review and improve its procedures. We commend the Board for taking those measures, and, once we have issued our opinions on the many allegations contained in Complainant's pending complaints, we will not continue to address past practices relating to committees of the University of Maryland that occurred in calendar year 2012.

Open Meetings Compliance Board

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